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# A BILL FOR AN ACT

RELATING TO MEDICAL CANNABIS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that several states have  
2 given people suffering from illness and disability access to  
3 medical cannabis, which can help address pain and generally make  
4 them feel better. However, some medical cannabis users risk  
5 their jobs if they use it, even if that use is off-site and does  
6 not affect the workplace.

7           The legislature further finds that the conflict between  
8 state and federal medical cannabis laws causes confusion for  
9 employers, who are unsure whether state medical cannabis laws  
10 supersede their power to enforce drug-free workplace policies  
11 against employees. Courts consistently rule in favor of  
12 employers when medical cannabis users challenge drug-free  
13 workplace policies, but they have not foreclosed the possibility  
14 that state medical cannabis laws could protect employees. Tools  
15 like fit for duty tests are even available for employers to  
16 manage workplace risk in potentially dangerous occupations.  
17 Nevertheless, without explicit statutory guidance, the courts



1 will not recognize these rights. Therefore, Hawaii's medical  
2 cannabis laws should clearly address the scope of accommodation  
3 that employers must provide to medical cannabis users.

4 The purpose of this Act is to:

5 (1) Prohibit an employer from discriminating against a  
6 person in hiring, termination, or condition of  
7 employment based on the person's status as a medical  
8 cannabis cardholder, under certain conditions;

9 (2) Specify that an employer may use a fit for duty test  
10 for medical cannabis users in potentially dangerous  
11 occupations; and

12 (3) Specify certain categories of employment that are  
13 exempt from the protections of this Act.

14 SECTION 2. Section 329-125.5, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§329-125.5 Medical cannabis patient and caregiver**  
17 **protections.** (a) No school shall refuse to enroll or otherwise  
18 penalize, and no landlord shall refuse to lease property to or  
19 otherwise penalize, a person solely for the person's status as a  
20 qualifying patient or primary caregiver in the medical cannabis  
21 program under this part, unless failing to do so would cause the



1 school or landlord to lose a monetary or licensing-related  
2 benefit under federal law or regulation; provided that the  
3 qualifying patient or primary caregiver strictly complied with  
4 the requirements of this part; provided further that the  
5 qualifying patient or primary caregiver shall present a medical  
6 cannabis registry card or certificate and photo identification,  
7 to ensure that the qualifying patient or primary caregiver is  
8 validly registered with the department of health pursuant to  
9 section 329-123.

10 (b) For the purposes of medical care, including organ  
11 transplants, a registered qualifying patient's use of cannabis  
12 in compliance with this part shall be considered the equivalent  
13 of the use of any other medication under the direction of a  
14 physician and shall not constitute the use of an illicit  
15 substance or otherwise disqualify a registered qualifying  
16 patient from medical care.

17 (c) No qualifying patient or primary caregiver under this  
18 part shall be denied custody of, visitation with, or parenting  
19 time with a minor, and there shall be no presumption of neglect  
20 or child endangerment, for conduct allowed under this part;  
21 provided that this subsection shall not apply if the qualifying



1 patient's or primary caregiver's conduct created a danger to the  
2 safety of the minor, as established by a preponderance of the  
3 evidence.

4 (d) This section shall apply to qualifying patients,  
5 primary caregivers, qualifying out-of-state patients, and  
6 caregivers of qualifying out-of-state patients who are validly  
7 registered with the department of health pursuant to this part  
8 and the administrative rules of the department of health.

9 (e) Unless a failure to do so would cause the employer to  
10 lose a monetary or licensing-related benefit under a contract or  
11 federal law, an employer shall not discriminate against a person  
12 in hiring, termination, or any term or condition of employment,  
13 other than contained in a collective bargaining agreement, if  
14 the discrimination is based upon either of the following:

- 15 (1) The person's status as a cardholder; or  
16 (2) A registered qualifying patient's positive drug test  
17 for cannabis components or metabolites, unless the  
18 registered qualifying patient was impaired by cannabis  
19 during the hours of employment or in a potentially  
20 dangerous occupation.



1        (f) In potentially dangerous occupations, an employer may  
2 use a fit for duty test as a risk-based assessment tool for a  
3 registered qualifying patient.

4        (g) Subsection (e) shall not apply to:

5        (1) Law enforcement officers in the State or counties or  
6 employees of a state correctional facility;

7        (2) Firefighters employed by the State or counties;

8        (3) Water safety officers, lifeguards, swimming  
9 instructors, or other employees of the State or  
10 counties responsible for the safety of the public at  
11 swimming pools or on beaches;

12        (4) Employees authorized to carry or use, or both,  
13 firearms on the job;

14        (5) Emergency medical services employees of the State or  
15 counties;

16        (6) Employees who administer or may administer controlled  
17 substances or other drugs to patients, whether in  
18 hospitals, nursing homes, or in emergency situations  
19 such as would be encountered by emergency medical  
20 services personnel;



- 1        (7) Employees who work with children, the elderly, or
- 2        other vulnerable populations;
- 3        (8) Civil defense emergency management personnel; and
- 4        (9) Employees who operate or are in physical control of
- 5        any of the following:
- 6        (A) Any combination of vehicles that have a gross
- 7        combination weight rating or gross combination
- 8        weight of 11,794 kilograms or more (26,001 pounds
- 9        or more), whichever is greater, inclusive of a
- 10       towed unit or units with a gross vehicle weight
- 11       rating or gross vehicle weight of more than 4,536
- 12       kilograms (10,000 pounds), whichever is greater;
- 13       (B) Any single vehicle that has a gross vehicle
- 14       weight rating or gross vehicle weight of 11,794
- 15       or more kilograms (26,001 pounds or more), or any
- 16       such vehicle towing a vehicle with a gross
- 17       vehicle weight rating or gross vehicle weight
- 18       that does not exceed 4,536 kilograms (10,000
- 19       pounds);
- 20       (C) Any single vehicle, or combination of vehicles,
- 21       that does not meet the definition of class A or



1           class B, but is either designed to transport  
2           sixteen or more passengers, including the driver,  
3           or is transporting material that has been  
4           designated as hazardous under title 49 U.S.C.  
5           section 5103 and is required to be placarded  
6           under subpart F of 49 C.F.R. part 172, or is  
7           transporting any quantity of a material listed as  
8           a select agent or toxin in 42 C.F.R. part 73;  
9           (D) Public utilities, such as the electrical power  
10           grid or the water source;  
11           (E) Machinery or power equipment; or  
12           (F) A motor vehicle."

13           SECTION 3. New statutory material is underscored.

14           SECTION 4. This Act shall take effect on January 2, 2050.



**Report Title:**

Medical Cannabis; Discrimination; Employer; Employee

**Description:**

Prohibits an employer from discriminating against a person in hiring, termination, or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions. Specifies that an employer may use a fit for duty test as a tool for medical cannabis users in potentially dangerous occupations. Exempts certain occupations. Effective 1/2/2050. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

